



DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 5, 6, 13, 19, and 52

[FAR Case 2019-007; Docket No. FAR 2019-0007, Sequence No. 1]

RIN 9000-AN90

Federal Acquisition Regulation: Update of Historically Underutilized Business Zone Program

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement changes to the Small Business Administration's regulations for the Historically Underutilized Business Zone Program.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before **[Insert date 60 days after date of publication in the *FEDERAL REGISTER*]** to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2019-007 to the Federal eRulemaking portal at <https://www.regulations.gov> by searching for "FAR Case

2019-007". Select the link "Comment Now" that corresponds with "FAR Case 2019-007". Follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "FAR Case 2019-007" on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

Instructions: Please submit comments only and cite "FAR Case 2019-007" in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Malissa Jones, Procurement Analyst, at 703-605-2815, or by email at malissa.jones@gsa.gov, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov. Please cite FAR Case 2019-007.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR to implement revisions the Small Business Administration (SBA)

has made in its regulations for the Historically Underutilized Business Zone (HUBZone) Program. Following a review of its HUBZone program regulations, SBA issued a rule on November 26, 2019, at 84 FR 65222, to update its regulations to reflect current policies, to eliminate ambiguities in its regulations, and to reduce burdens on small businesses and procuring agencies. This proposed FAR rule updates terminology and processes to correspond with SBA's changes, such as updating the definition of a HUBZone small business concern and the procedures for filing and processing HUBZone protests.

II. Discussion and Analysis

The proposed changes to the FAR are summarized in the following paragraphs.

A. Definitions and Terminology.

The definition of "HUBZone small business concern" at FAR 2.101, Definitions, and FAR 52.219-8, Utilization of Small Business Concerns, is revised to refer to the requirements described in 13 CFR 126.200 and SBA's designation of a HUBZone small business concern in the Dynamic Small Business Search (DSBS). The term "qualified" HUBZone is removed throughout as the definition of HUBZone specifies it is a firm the SBA has certified as a HUBZone small business concern.

The representations for HUBZone small business concerns in FAR 52.212-3, Offeror Representations and Certifications—Commercial Items, and in FAR 52.219-1, Small Business Program

Representations, are revised to replace references to SBA's List of Qualified HUBZone Small Business Concerns with references to DSBS. Throughout the FAR, instructions to contact SBA to ascertain a concern's status as a HUBZone small business concern are revised to direct the reader to DSBS.

B. Process for Filing a Protest.

HUBZone status protests procedures at FAR 19.306 are revised to specify who may protest the prospective contractor's HUBZone status for HUBZone sole-source awards, that the Director of SBA's HUBZone Program will determine whether a protested concern has certified HUBZone status and, if SBA upholds the protest, that SBA will remove the concern's HUBZone status in DSBS. Updated references and procedures for filing protests against a HUBZone joint venture, based on SBA's regulations, are added.

C. Removal of Obsolete Text.

This rule proposes to delete obsolete text in FAR subpart 19.13, Historically Underutilized Business Zone (HUBZone) Program. In FAR 19.1302, Applicability, text is deleted regarding the application of the procedures in FAR subpart 19.13 to all Federal agencies that employ one or more contracting officers. This text is no longer necessary because agencies using the FAR employ one or more contracting officers. Paragraph (e) is deleted in FAR 19.1304, Exclusions. This paragraph contains an outdated exclusion for requirements that do not exceed the micro-purchase threshold.

SBA removed this requirement from their regulations at 13 CFR 126.608; therefore, this rule proposes to remove it from the FAR.

D. Removal of Notification Requirement.

This rule proposes to delete language at FAR 19.1303(d), FAR 52.212-3(c)(10)(i), paragraph (g) in the clause at FAR 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award, and paragraph (f) in the clause at FAR 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns. The current language requires a HUBZone offeror to be a HUBZone small business concern at the time of contract award and to notify the contracting officer if material changes occur before contract award that could affect its HUBZone eligibility. SBA's rule removes this requirement; therefore, this FAR rule proposes to remove it from the FAR.

E. Removal of Restriction to Applying HUBZone Authorities to Contracts and Subcontracts at or below the Simplified Acquisition Threshold.

This rule proposes to delete paragraph (a)(9) of FAR 13.005, List of laws inapplicable to contracts and subcontracts at or below the simplified acquisition threshold (SAT). This would remove the restriction against applying the HUBZone Act of 1997, 15 U.S.C. 657a, to contracts and subcontracts at or below the SAT. In FAR 19.1305, HUBZone set-aside procedures, the exception for acquisitions not exceeding the simplified acquisition threshold is proposed for

deletion. This would result in the procedures at FAR 19.202-1 and FAR 19.402 being applied to HUBZone set-asides that do not exceed the simplified acquisition threshold. Additionally, FAR 19.1306, HUBZone sole-source awards, was revised to remove paragraph (a)(4), which restricted HUBZone sole-source awards to those valued above the SAT. This means that contracting officers would be able to make HUBZone sole-source awards with dollar values at or below the SAT.

III. Applicability to Contracts at or below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-The-Shelf (COTS) Items

This rule amends the provision and clauses at FAR 52.212-3, 52.219-1, 52.219-4, and 52.219-8. However, this rule does not impose any new requirements on contracts at or below the SAT or for commercial items, including COTS items. These provisions and clauses continue to apply to acquisitions at or below the SAT and to acquisitions for commercial items, including COTS items.

This rule proposes to apply HUBZone sole-source authority of 15 U.S.C. 657a to acquisitions at or below the SAT. Therefore, the clause at FAR 52.219-3 will apply to acquisitions at or below the SAT.

A. Applicability to Contracts at or below the Simplified Acquisition Threshold.

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the SAT. Section 1905 generally

limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law under certain circumstances, including when the FAR Council makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law. The FAR Council intends to make a determination to apply this statute to acquisitions at or below the SAT.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including Commercially Available Off-The-Shelf (COTS) Items.

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. Section 1906 provides that if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items.

41 U.S.C. 1907 states that acquisitions of COTS items will be exempt from certain provisions of law unless the Administrator for Federal Procurement Policy makes a written determination and finds that it would not be in the best

interest of the Federal Government to exempt contracts for the procurement of COTS items.

The FAR Council intends to make a determination to apply this statute to acquisitions for commercial items. The Administrator for Federal Procurement Policy intends to make a determination to apply this statute to acquisitions for COTS items.

C. Determinations.

The HUBZone Act of 1997, 15 U.S.C. 657a, tasks SBA with administering a program to assist participating small businesses located in areas with low income levels, high poverty and high unemployment rates, Indian reservations, closed military bases, or disaster areas with contracting opportunities in the form of set-asides, sole-source awards, and price-evaluation preferences. Its primary objectives are job creation and increased capital investment in distressed communities. The purpose of this rule is to implement revisions SBA has finalized in their HUBZone program.

These statutory requirements are reflected in SBA's final rule published in the *Federal Register* at 84 FR 65222 on November 26, 2019, which did not exempt acquisitions at or below the SAT that are set aside for, or awarded on a sole-source basis to HUBZone small businesses.

The law is silent on the applicability of these requirements to acquisitions at or below the SAT and does not independently provide for criminal or civil penalties; nor

does it include terms making express reference to 41 U.S.C. 1905 and its application to acquisitions at or below the SAT. Therefore, it does not apply to acquisitions at or below the SAT unless the FAR Council makes a written determination as provided at 41 U.S.C. 1905.

Application of the law to acquisitions at or below the SAT will maximize the positive impact set-aside and sole-source contracts provide for HUBZone small businesses by ensuring these benefits extend to the many contracts valued at or below the SAT. According to the Federal Procurement Data System, an average of 283,374 contracts per year resulted from FAR part 19 set-asides and sole-source awards at or below the SAT during fiscal years 2016-2018. Failure to apply the HUBZone Act to the maximum extent possible would exclude a significant number of acquisitions, which would not advance the interests of small businesses and increase their opportunities in the Federal marketplace. The Federal Government has a policy of promoting HUBZone participation in Government contracting. The Small Business Act (Section 15(g)(1), 15 U.S.C. 644(g)(1)) includes a 3% annual HUBZone contracting goal for all prime contracts and subcontract awards each fiscal year. Historically, the Federal Government has not achieved the HUBZone goal. Applying the requirement below the SAT will aid Federal agencies in achieving the goal.

For these reasons, it is in the best interest of the Federal Government to apply the requirements of the rule to acquisitions at or below the SAT.

In addition, SBA's final rule did not exempt the acquisition of commercial items that are set aside for, or awarded on a sole-source basis to HUBZone small businesses. The law is silent on the applicability of these requirements to acquisitions of commercial items and does not independently provide for criminal or civil penalties; nor does it include terms making express reference to 41 U.S.C. 1906 and its application to acquisitions of commercial items. Therefore, it does not apply to acquisitions of commercial items unless the FAR Council makes a written determination as provided at 41 U.S.C. 1906.

Application of the law to acquisitions of commercial items will maximize the positive impact set-aside and sole-source contracts provide for HUBZone small businesses by ensuring these benefits extend to the many contracts for commercial items. According to the Federal Procurement Data System, an average of 1,548,105 contracts per year resulted from FAR part 19 set-asides and sole-source awards for commercial items during fiscal years 2016-2018. Failure to apply the HUBZone Act to the maximum extent possible would exclude a significant number of acquisitions, which would not advance the interests of small businesses and increase their opportunities in the Federal marketplace. The Federal

Government has a policy of promoting HUBZone participation in Government contracting. The Small Business Act (Section 15(g)(1), 15 U.S.C. 644(g)(1)) includes a 3% annual HUBZone contracting goal for all prime contracts and subcontract awards each fiscal year. Historically the Federal Government has not achieved the HUBZone goal. Applying the requirement to commercial items will aid Federal agencies in achieving the goal.

For these reasons, it is in the best interest of the Federal Government to apply the requirements of the rule to the acquisition of commercial items.

IV. Expected Impact of the Rule

This proposed rule will impact the operations of the Government as described in this section. The proposed rule specifies SBA certifies firms as HUBZone small business concerns in DSBS. The HUBZone small business certification data contained in SBA's DSBS is also available in the System for Award Management (SAM). Contracting officers may use this information to identify certified HUBZone small business concerns. The proposed rule removes the requirement for a HUBZone offeror to be a HUBZone small business concern at the time of contract award and to notify the contracting officer if material changes occur before contract award that could affect its HUBZone eligibility. Additionally, minor changes are made to the processing of HUBZone status protests.

This proposed rule is not expected to result in any costs to contractors or offerors.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD, GSA and NASA will send the rule and the "Submission of Federal Rules Under the Congressional Review Act" form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This rule is not anticipated to be a major rule under 5 U.S.C. 804.

VII. Regulatory Flexibility Act

The change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601-612. The Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

DoD, GSA, and NASA are proposing to amend the FAR to implement revisions SBA has made in its regulations for the HUBZone Program. Following a review of its HUBZone program regulations, SBA issued a final rule on November 26, 2019, at 84 FR 65222, to update its regulations to reflect current policies, to eliminate ambiguities in its regulations, and to reduce burdens on small businesses and procuring agencies. This proposed FAR rule updates terminology and processes to correspond with SBA's changes, such as updating the definition of HUBZone small business concern and the procedures for filing and processing HUBZone protests. This rule also proposes to remove the restriction against applying the HUBZone Act of 1997, 15 U.S.C. 657a, to contracts and subcontracts at or below the SAT.

The objective of this rule is to implement SBA's revisions to the HUBZone program regulations.

This rule may have a positive economic impact on small entities that qualify for the HUBZone program and that are interested in participating in Federal procurement. By reducing burden on firms interested in becoming HUBZone small business concerns, more firms may participate in and benefit from the program. SBA's Dynamic Small Business Search database includes 6,897 small businesses with active HUBZone certifications. For fiscal years 2016, 2017, and 2018, the Federal Government made approximately 6,600 awards to approximately 662 unique entities certified by SBA as HUBZone small business concerns. About 5,627 of these were awarded to 601 unique entities through a HUBZone set-aside; 203 were awarded to 97 unique entities on a sole-source basis under the HUBZone program; and 632 were awarded to 25 unique entities using the HUBZone price evaluation preference. Approximately 46,187 were awarded to about 2,084 unique HUBZone small businesses in open competition with other firms. According to the Federal Procurement Data System, an average of 283,374 contracts per year resulted from FAR part 19 set-asides and sole-source awards at or below the SAT during fiscal years 2016-2018. Application of the HUBZone Act to acquisitions at or below the SAT is expected to increase the benefits from HUBZone set-aside and sole-source contracts and increase HUBZone small businesses' opportunities in the Federal marketplace.

This proposed rule does not include any new reporting, recordkeeping, or other compliance requirements for small entities.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches that would accomplish the stated objectives.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit comments separately and should cite 5 U.S.C. 610 (FAR Case 2019-007) in correspondence.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 3501-3521) applies to the information collection described in this rule; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Numbers 9000-0136, Commercial Item Acquisitions, and 9000-0007, Subcontracting Plans.

List of Subjects in 48 CFR Parts 2, 5, 6, 13, 19, and 52

Government procurement.

William F. Clark,
Director,

Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 5, 6, 13, 19, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 5, 6, 13, 19, and 52 continues to read as follows:

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 in paragraph (b) (2) by—

a. In the definition “HUBZone” removing “or redesignated areas,” and adding “redesignated areas, governor-designated covered areas, or qualified disaster areas,” in its place;

b. In the definition “HUBZone contract” removing from paragraph (1) “sole source” and adding “sole-source” in its place; and

c. Revising the definition “HUBZone small business concern” to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

HUBZone small business concern means a small business concern that meets the requirements described in 13 CFR 126.200, certified by the Small Business Administration (SBA) and designated by SBA as a HUBZone small business

concern in the Dynamic Small Business Search (DSBS) (13 CFR 126.103).

* * * * *

PART 5—PUBLICIZING CONTRACT ACTIONS

5.206 [Amended]

3. Amend section 5.206 in paragraph (a) introductory text, by removing the word “qualified”.

PART 6—COMPETITION REQUIREMENTS

4. Amend section 6.205 by revising paragraph (a); and removing from paragraph (b) the word “qualified”.

The revision reads as follows:

6.205 Set-asides for HUBZone small business concerns.

(a) To fulfill the statutory requirements relating to the HUBZone Act of 1997 (15 U.S.C. 631 note), contracting officers may set aside solicitations to allow only HUBZone small business concerns to compete (see 19.1305).

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.003 [Amended]

5. Amend section 13.003 in paragraph (b)(2)(ii) by removing “and 19.1306(a)(4)”.

13.005 [Amended]

6. Amend section 13.005 by removing paragraph (a)(5), and redesignating paragraphs (a)(6) through (8) as paragraphs (a)(5) through (7), respectively.

PART 19—SMALL BUSINESS PROGRAMS

19.301-1 [Amended]

7. Amend section 19.301-1 in paragraph (d) by removing "concern both at the time of initial offer and at the time of contract award" and adding "concern at the time of initial offer" in its place.

8. Amend section 19.306 by—

- a. Revising paragraph (b);
- b. In paragraph (c) removing "HUBZone qualifying" and adding "HUBZone eligibility" in its place;
- c. Revising paragraph (d);
- d. In paragraph (e)—
 - i. Revising the heading;
 - ii. Removing from the introductory text of paragraph (e) (1) "protest" and adding "written protest" in its place;
- e. Revising paragraphs (f) and (h) (1) (ii);
- f. Removing paragraph (h) (3);
- g. In paragraph (i)—
 - i. Removing from the introductory text "The HUBZone Program Director" and "(AA/GCBD)" and adding "SBA" and "(AA/GC&BD)" in their places, respectively;
 - ii. Revising the second sentence of paragraph (1);
 - iii. Removing from paragraph (2) "AA/GCBD" and adding "AA/GC&BD" in its place;
 - iv. Revising paragraph (3);

v. Removing from paragraph (4) "or (h)(3)", and removing wherever it appears "(AA/GCBD)" and adding "(AA/GC&BD)" in its place; and

vi. Revising paragraph (5).

h. In paragraph (1)–

i. Adding to the end of paragraph (i) "and";

ii. Removing paragraph (ii), and redesignating paragraph (iii) as paragraph (ii); and

iii. Removing from paragraph (2) "Director/HUB's decision" and adding "HUBZone Program Director's determination" in its place; and

i. Removing from paragraph (m) wherever it appears "AA/GCBD" and adding "AA/GC&BD" in its place.

The revisions read as follows:

19.306 Protesting a firm's status as a HUBZone small business concern.

* * * * *

(b)(1) For sole-source procurements, SBA or the contracting officer may protest the prospective contractor's certified HUBZone status; for all other procurements, SBA, the contracting officer, or any other interested party may protest the apparent successful offeror's certified HUBZone status.

(See 13 CFR 126.800.)

(2) The Director of SBA's Office of the HUBZone Program will determine whether the concern has certified HUBZone status. If SBA upholds the protest, SBA will remove

the concern's HUBZone status in the Dynamic Small Business Search (DSBS). SBA's protest regulations are found in subpart H "Protests" at 13 CFR 126.800 through 126.805.

* * * * *

(d)(1) All protests must be in writing and must state all specific grounds for the protest, i.e., why the protested concern did not meet the eligibility requirements at 13 CFR 126.200 at the time of the concern's application to SBA for certification as a HUBZone small business concern or at the time SBA certified or last recertified the concern as a HUBZone small business concern. Assertions that a protested concern is not a HUBZone small business concern, without setting forth specific facts or allegations, will not be considered by SBA (see 13 CFR 126.801(b)).

(2) Protests filed against a HUBZone joint venture must state one or, if applicable, both of the following:

(i) Why the HUBZone small business party to the joint venture did not meet the eligibility requirements at 13 CFR 126.200 at the time of its application to SBA for certification or at the time SBA certified or last recertified the concern as a HUBZone small business concern.

(ii) Why the joint venture did not meet the requirements at 13 CFR 126.616 at the time of submission of its offer for a HUBZone contract.

(e) *Submission of a protest.* * * *

(f) The contracting officer shall forward all protests with a referral letter to the Director of SBA's Office of the HUBZone Program, by email to *hzprotests@sba.gov*. The referral letter shall include the following:

(1) The solicitation number.

(2) The contracting officer's name and contact information.

(3) The type of HUBZone contract (i.e., sole source, set-aside, full and open competition with a HUBZone price evaluation preference, or reserve for HUBZone small business concerns under a multiple-award contract).

(4) For a procurement conducted using full and open competition with a HUBZone price evaluation preference, whether the protester's opportunity for award was affected by the preference.

(5) For a HUBZone set-aside, whether the protester submitted an offer.

(6) Whether the protested concern was the apparent successful offeror.

(7) Whether the procurement was conducted using sealed bid or negotiated procedures.

(8) The bid opening date, if applicable.

(9) The date the protester was notified of the apparent successful offeror.

(10) The date the contracting officer received the protest.

(11) The date the protested concern submitted its initial offer or quote to the contracting officer.

(12) Whether a contract has been awarded, and if so, the date of award and contract number.

* * * * *

(h) * * *

(1) * * *

(ii) Award the contract if—

(A) SBA does not issue its decision within 15 business days after receipt of the protest; and

(B) The contracting officer determines in writing that there is an immediate need to award the contract and that waiting for SBA's determination will be disadvantageous to the Government.

* * * * *

(i) * * *

(1) * * *. If the AA/GC&BD subsequently overturns the initial determination or dismissal, the contracting officer may apply the AA/GC&BD decision to the procurement in question.

* * * * *

(3) If the contracting officer has made a written determination in accordance with (h) (1) (ii) of this section, awarded the contract, and the Director of SBA's Office of the HUBZone Program's ruling sustaining the protest is received after award—

(i) The contracting officer shall either—

(A) Terminate the contract; or

(B) (1) Make a written determination that termination is not in the best interests of the Government; and

(2) Not exercise any options or award further task or delivery orders under the contract;

(ii) SBA will remove the concern's designation as a certified HUBZone small business concern in the Dynamic Small Business Search (DSBS). The concern is not permitted to submit an offer as a HUBZone small business concern, until SBA issues a decision that the ineligibility is resolved; and

(iii) After SBA updates the concern's designation as a HUBZone small business in DSBS, the contracting officer shall update the Federal Procurement Data System (FPDS) to reflect the final decision of the HUBZone Program Director if no appeal is filed.

* * * * *

(5) If the AA/GC&BD affirms the decision of the HUBZone Program Director, finding the protested concern is ineligible, and contract award has occurred—

(i) The contracting officer shall either—

(A) Terminate the contract; or

(B) (1) Make a written determination that termination is not in the best interests of the Government; and

(2) Not exercise any options or award further task or delivery orders under the contract;

(ii) SBA will remove the concern's designation as a certified HUBZone small business concern in DSBS. The concern is not permitted to submit an offer as a HUBZone small business concern until SBA issues a decision that the ineligibility is resolved or the AA/GC&BD finds the concern is eligible on appeal; and

(iii) After SBA updates the concern's designation as a HUBZone small business in DSBS, the contracting officer shall update FPDS to reflect the AA/GC&BD decision.

* * * * *

9. Amend section 19.703 by revising paragraph (d) (1) to read as follows:

19.703 Eligibility requirements for participating in the program.

* * * * *

(d) (1) Contractors are required to confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing SAM or the Dynamic Small Business Search (DSBS) at https://web.sba.gov/pro-net/search/dsp_dsbs.cfm.

* * * * *

19.1302 [Removed and Reserved]

10. Remove and reserve section 19.1302.

11. Amend section 19.1303 by revising paragraphs (b) and (d) to read as follows:

19.1303 Status as a HUBZone small business concern.

* * * * *

(b) If SBA determines that a concern is a HUBZone small business, it will designate the concern as a HUBZone small business in the Dynamic Small Business Search (DSBS) at *https://web.sba.gov/pro-net/search/dsp_dsbs.cfm*. SBA's designation also appears in SAM. Only firms designated in DSBS as HUBZone small business concerns are eligible for HUBZone preferences. HUBZone preferences are not contingent on the place of performance.

* * * * *

(d) To be eligible for a HUBZone contract under this section, a HUBZone small business concern must be a HUBZone small business concern at the time of its initial offer.

19.1304 [Amended]

12. Amend section 19.1304 by removing paragraph (e) and redesignating paragraph (f) as paragraph (e).

19.1305 [Amended]

13. Amend section 19.1305 by—

- a. Removing from paragraph (a)(3) "sole source" and adding "sole-source" in its place;
- b. Removing from paragraph (c) "qualified";
- c. In paragraph (d)—

i. Removing from the introductory text “, except for acquisitions not exceeding the simplified acquisition threshold,”; and

ii. Removing from paragraph (2) “acquisition” and adding “acquisition until the head of the contracting activity issues a written decision on the appeal,” in its place.

14. Amend section 19.1306 by—

a. Revising the section heading;

b. In paragraph (a)—

i. Removing from the introductory text “sole source” and adding “sole-source” in its place;

ii. Removing paragraph (4);

iii. Redesignating paragraphs (5) and (6) as paragraphs (4) and (5); and

c. Removing from paragraph (b) “sole source award” and adding “sole-source award (see 13 CFR 126.610)” in its place.

The revision reads as follows:

19.1306 HUBZone sole-source awards.

* * * * *

19.1309 [Amended]

15. Amend section 19.1309 by removing from paragraph (a)(1) “Sole Source Award” and “sole source basis” and adding “Sole-Source Award” and “sole-source basis” in their places, respectively.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

16. Amend section 52.212-3 by revising the date of the provision and paragraph (c)(10)(i) to read as follows:

**52.212-3 Offeror Representations and Certifications—
Commercial Items.**

* * * * *

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS **(DATE)**

* * * * *

(c) * * *

(10) * * *

(i) It ☐ is, ☐ is not a HUBZone small business concern listed, on the date of this representation, as having been certified by SBA as a HUBZone small business concern in the Dynamic Small Business Search, and will attempt to maintain (see 13 CFR 126.200(e)) an employment rate of HUBZone residents of 35 percent of its employees during performance of a HUBZone contract; and

* * * * *

17. Amend section 52.212-5 by—

a. Revising the date of the clause;

b. Removing from paragraph (b)(11)(i) "Sole Source" and "(MAR 2020)" and adding "Sole-Source" and "**(DATE)**" in their places, respectively;

c. Removing from paragraph (b)(12)(i) "(MAR 2020)" and adding "**(DATE)**" in its place;

d. Removing from paragraph (b)(16) "(OCT 2018)" and adding "**(DATE)**" in its place;

e. Removing from paragraph (b) (17) (i) "(JUN 2020)" and adding "(DATE)" in its place;

f. In paragraph (e) (1)–

i. Removing from the introductory text "of this paragraph"; and

ii. Removing from paragraph (v) "(OCT 2018)" and adding "(DATE)" in its place;

g. In Alternate II–

i. Revising the date; and

ii. In paragraph (e) (1) (ii) (E) removing "(OCT 2018)" and adding "(DATE)" in its place.

The revisions read as follows:

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE

ORDERS—COMMERCIAL ITEMS (DATE)

* * * * *

Alternate II (DATE) . * * *

* * * * *

18. Amend section 52.213-4 by revising the date of the clause and removing from paragraph (a) (2) (viii) "(NOV 2020)" and adding "(DATE)" in its place.

The revision reads as follows:

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

TERMS AND CONDITIONS-SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL
ITEMS) (DATE)

* * * * *

19. Amend section 52.219-1 by revising the date of the provision and paragraph (c)(8)(i) to read as follows:

52.219-1 Small Business Program Representations.

* * * * *

SMALL BUSINESS PROGRAM REPRESENTATIONS (DATE)

* * * * *

(c) * * *

(8) * * *

(i) It ☐ is, ☐ is not a HUBZone small business concern listed, on the date of this representation, as having been certified by SBA as a HUBZone small business concern in the Dynamic Small Business Search, and will attempt to maintain (see 13 CFR 126.200(e)) an employment rate of HUBZone residents of 35 percent of its employees during performance of a HUBZone contract; and

* * * * *

20. Amend section 52.219-3 by revising the heading, clause heading and date; and removing paragraph (g).

The revisions read as follows:

52.219-3 Notice of HUBZone Set-Aside or Sole-Source Award.

* * * * *

NOTICE OF HUBZONE SET-ASIDE OR SOLE-SOURCE AWARD (DATE)

* * * * *

21. Amend section 52.219-4 by revising the clause heading and date, and removing paragraph (f).

The revision reads as follows:

52.219-4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns.

* * * * *

NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS

(DATE)

* * * * *

22. Amend section 52.219-8 by—

- a. Revising the date of the clause;
- b. In paragraph (a), revising the definition “HUBZone small business concern”; and
- c. Revising paragraph (d) (5).

The revisions read as follows:

52.219-8 Utilization of Small Business Concerns.

* * * * *

UTILIZATION OF SMALL BUSINESS CONCERNS (DATE)

(a) * * *

HUBZone small business concern means a small business concern that meets the requirements described in 13 CFR 126.200, certified by the Small Business Administration (SBA) and designated by SBA as a HUBZone small business concern in the Dynamic Small Business Search (DSBS).

* * * * *

(d) * * *

(5) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing DSBS at https://web.sba.gov/pro-net/search/dsp_dsbs.cfm or SAM.

* * * * *

23. Amend section 52.219-9 by revising the date of clause and paragraph (e) (4) to read as follows:

52.219-9 Small Business Subcontracting Plan.

* * * * *

SMALL BUSINESS SUBCONTRACTING PLAN **(DATE)**

* * * * *

(e) * * *

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the Dynamic Small Business Search (DSBS) at https://web.sba.gov/pro-net/search/dsp_dsbs.cfm or SAM.

* * * * *

24. Amend section 52.244-6 by—

a. Revising the date of the clause; and

b. Removing from paragraph (c) (1) (vii) “(Oct 2018)” and adding “**(DATE)**” in its place.

The revision reads as follows:

52.244-6 Subcontracts for Commercial Items.

* * * * *

SUBCONTRACTS FOR COMMERCIAL ITEMS (**DATE**)

* * * * *

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